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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 C.F., *et al.*,

10 Plaintiffs,

11 v.

12 LASHWAY, *et al.*,

13 Defendants.  
14

CASE NO. C16-1205 RSM

ORDER DENYING PLAINTIFFS'  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT

15 **I. INTRODUCTION**

16 This matter is before the Court on Plaintiffs' Motion for Partial Summary Judgment.  
17 Dkt. #21. Plaintiffs C.F., L.B., and J.P. (collectively "Plaintiffs") are developmentally disabled  
18 Washington State residents who qualify for Medicaid-funded community-based habilitative  
19 services. Despite their qualification, Plaintiffs claim they are deprived of due process protections  
20 and prompt access to these services because of Defendants' systemic mismanagement of  
21 Washington State's Medicaid-funded community-based habilitative services. Plaintiffs allege  
22 violations of the Americans with Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act  
23 ("RA"), and subchapter XIX of the Social Security Act; Plaintiffs now ask the Court to hold that  
24 Defendants have violated their rights under the Social Security Act. Defendants dispute  
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1 Plaintiffs' assertions, and argue that genuine issues of material fact preclude the Court from  
2 determining whether their actions violate two sections of subchapter XIX of the Social Security  
3 Act. For the reasons discussed herein, the Court agrees with Defendants and Plaintiffs' motion  
4 for partial summary judgment is DENIED.

## 5 **II. BACKGROUND**

6 The Court previously set forth the procedural and factual background to this action and  
7 incorporates it by reference herein. *See* Dkt. #58 at 2-4.

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9 In summary, Plaintiffs are developmentally disabled Washington State residents who  
10 qualify for Medicaid-funded community-based habilitative services. Dkt. #1 ¶ 1. Despite their  
11 eligibility, Plaintiffs have not received the community-based habilitative services they seek, and  
12 they allege Defendants, the Acting Secretary of the DSHS and the Director of the HCA, are to  
13 blame. *Id.* ¶¶ 1-2. Plaintiffs claim Defendants and their respective agencies have not established  
14 an adequate system to insure individuals with developmental disabilities receive habilitative  
15 services in community-based settings. *Id.* ¶ 3. Instead, Plaintiffs allege the provision of these  
16 services is not reasonably prompt, individuals are not provided a meaningful choice of  
17 community-based habilitative service providers, individuals are not notified of their right to a  
18 hearing when there is a determination or delay in the provision of these services, and the current  
19 administration of these services allows community-based habilitative service providers to  
20 discriminate against developmentally disabled individuals based on the severity of their  
21 disability. *Id.* ¶¶ 2, 31, 44, 62-69.

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24 Because of Defendants' purported failures, Plaintiffs contend they are at serious risk of  
25 institutionalization. Plaintiffs thus allege Defendants' administration of these services violates

1 the integration mandates of Title II of the Americans with Disabilities Act (“ADA”), Section 504  
2 of the Rehabilitation Act (“RA”), and the Supreme Court’s pronouncement in *Olmstead v. L.C.*,  
3 527 U.S. 581 (1999). *Id.* ¶¶ 1-3, 31, 62-69.

4       Aside from alleging integration mandate violations, Plaintiffs also claim Defendants’  
5 administration of the Core and Community Protection waivers violates Title XIX of the Social  
6 Security Act, 42 U.S.C. § 1396. Dkt. #1 ¶¶ 70-75. Defendants allegedly violate Title XIX  
7 because they fail to provide Plaintiffs, and the proposed class members, with: (1) reasonably  
8 prompt access to community-based habilitative services; (2) a meaningful choice of providers;  
9 and (3) adequate written notification of Defendants’ determinations and Plaintiffs’ right to appeal  
10 those determinations. *Id.* ¶¶ 71 and 73.

12       Because Plaintiffs’ motion for class certification was denied, only C.F.’s, L.B.’s, and  
13 J.P.’s claims remain. *See* Dkt. #58. C.F., L.B., and J.P. all received supported living services, a  
14 type of community-based habilitative service, in the past, but those services were terminated by  
15 their respective supported living service providers. Dkt. #1 ¶¶ 5-7. Following the termination of  
16 their supported living services, C.F., L.B., and J.P. sought replacement services, but they claim  
17 replacement services have not been provided to them with reasonable promptness. *Id.* ¶ 71.  
18 C.F., J.P., and L.B. also claim Defendants have deprived them of due process protections.  
19 *Id.* ¶ 73.

21       Because of Defendants’ alleged failure to provide supported living services with  
22 reasonable promptness, Plaintiff C.F. alleges he has been institutionalized at Washington State  
23 residential habilitation centers since October 2014. *Id.* ¶ 5. Plaintiff J.P. is also institutionalized  
24 at a residential habilitation center, and she claims that despite having a supported living provider  
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1 committed to serving her, that provider cannot recruit and retain enough staff to support her  
2 transition back into the community. *Id.* ¶ 6. Plaintiff L.B. is not currently institutionalized, but  
3 claims she has been at risk for institutionalization since October 2015, when her supported living  
4 provider discontinued her services. *Id.* ¶ 7. Plaintiff L.B. currently resides with her mother and  
5 stepfather. *Id.* Plaintiff L.B. alleges that despite DSHS’s efforts to find her a supported living  
6 provider, no agency has accepted her referral due to a lack of staff. *Id.*

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8 Plaintiffs’ motion for partial summary judgment is now before the Court.

### 9 III. LEGAL STANDARD

10 Summary judgment is appropriate where “the movant shows that there is no genuine  
11 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.  
12 R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). When ruling on  
13 summary judgment, courts do not weigh evidence to determine the truth of the matter, but “only  
14 determine whether there is a genuine issue for trial.” *Crane v. Conoco, Inc.*, 41 F.3d 547, 549  
15 (9th Cir. 1994) (citing *Fed. Deposit Ins. Corp. v. O’Melveny & Meyers*, 969 F.2d 744, 747 (9th  
16 Cir. 1992), *rev’d on other grounds*, 512 U.S. 79 (1994)). Material facts are those which might  
17 affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at 248.

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19 Courts must draw all reasonable inferences in favor of the non-moving party. *See*  
20 *O’Melveny & Meyers*, 969 F.2d at 747. However, the nonmoving party must make a “sufficient  
21 showing on an essential element of her case with respect to which she has the burden of proof”  
22 to survive summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Further,  
23 “[t]he mere existence of a scintilla of evidence in support of the plaintiff’s position will be  
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1 insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.”  
2 *Anderson*, 477 U.S. at 252.

#### 3 IV. DISCUSSION

4 Plaintiffs contend Defendants’ actions violate two provisions of subchapter XIX of the  
5 Social Security Act. *See* Dkts. #1 ¶¶ 71, 73 and #21 at 1-3. Plaintiffs first claim Defendants  
6 violate Section 1396a(a)(8) of Title 42 of the United States Code because Defendants have not  
7 provided them with supported living services with reasonable promptness. Dkt. #21 at 11-16.  
8 Plaintiffs then contend Defendants’ actions violate Section 1396a(a)(3) of Title 42 of the United  
9 States Code because Defendants did not provide them notice of their right to a hearing, or an  
10 opportunity for a hearing, even though their request for supported living services has not been  
11 authorized. *Id.* at 16-17. The Court addresses each argument in turn.

##### 12 13 **A. Genuine Disputes of Material Fact Preclude the Court From Determining if** 14 **Defendants Have Not Provided Plaintiffs With Reasonably Prompt Access to** 15 **Supported Living Services.**

16 A genuine issue of material fact precludes the Court from finding that Plaintiffs have  
17 been denied reasonably prompt access to supported living services. Whether or not community-  
18 based habilitative services are provided with reasonable promptness is determined by a test of  
19 reasonableness. *See Hanley v. Zucker*, No. 15-cv-5958, 2016 WL 3963126, at \*3 (S.D.N.Y. July  
20 21, 2016) (“The Medicaid Act does not define a specific time limit for ‘reasonable promptness’  
21 for furnishing medical assistance. A 2001 guidance letter issued by the Centers for Medicare and  
22 Medicaid Services . . . in the U.S. Department of Health and Human Services . . . states that §  
23 1396a(a)(8)’s ‘reasonable promptness’ is ultimately ‘governed by a test of reasonableness.’”);  
24 *also* Dkt. #50, Ex. H at 7. Here, Plaintiffs do not explain how, given this standard, their services  
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1 have not been provided in a reasonably prompt manner. Instead of explaining how Defendants'  
2 actions fail this test of reasonableness, Plaintiffs simply cite to cases outside of the Ninth Circuit  
3 and unsuccessfully attempt to draw parallels between those cases and this matter to conclude that  
4 their services have not been provided in a reasonably prompt manner. *See* Dkt. #21 at 11-16.  
5 Plaintiffs, through their failure to address how the facts demonstrate their services have not been  
6 provided with reasonable promptness, fail to demonstrate they are entitled to judgment as a  
7 matter of law.  
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9         However, even if Plaintiffs had identified and explained how the facts warrant judgment  
10 in their favor, Defendants have presented sufficient evidence to raise genuine disputes of  
11 material fact. With respect to Plaintiffs L.B. and C.F., Defendants explain that even though  
12 supported living services require individuals to secure their own housing, L.B. and C.F. have not  
13 secured housing where supported living services can be provided. Dkt. #35 at 15. Defendants  
14 also highlight that C.F. has limited her search for supported living services to a single provider  
15 who currently does not have any openings, and even though C.F., and L.B., have been presented  
16 with other supported living service options, they have refused to consider them. *Id.* at 16. With  
17 respect to Plaintiff J.P., Defendants contend the delay in providing her services is reasonable  
18 considering her unique needs. *Id.* Defendants explain that given J.P.'s unique needs, she  
19 requires additional caregivers and J.P. must also develop a personal rapport with those caregivers  
20 before she transitions into the community. *Id.* Because of J.P.'s unique needs, Defendants  
21 explain they have tried to facilitate her search of caregivers by offering the supported living  
22 provider enhanced reimbursement rates. *Id.* Given these facts, a reasonable jury could find that  
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1 Defendants' have not failed to provide Plaintiffs' supported living services with reasonable  
2 promptness.

3 In summary, the Court agrees that genuine disputes of material fact preclude it from  
4 determining that Defendants have failed to provide Plaintiffs supported living services with  
5 reasonable promptness.

6 **B. Genuine Disputes of Material Fact Preclude the Court From Determining If**  
7 **Defendants Failed to Provide Plaintiffs with an Opportunity to be Heard Pursuant**  
8 **to 42 U.S.C. § 1396a(a)(3).**

9 Section 1396a(a)(3) of Title 42 of the United States Code requires State plans for medical  
10 assistance to "provide for granting an opportunity for a fair hearing before the State Agency to  
11 any individual whose claim for medical assistance under the plan is denied or is not acted upon  
12 with reasonable promptness." Regulations that implement Section 1396a(a)(3) also require  
13 agencies that administer Medicaid programs to inform applicants, in writing, of their right to a  
14 fair hearing, their right to request expedited hearings, and the method by which to obtain such a  
15 hearing. 42 C.F.R. §§ 431.206(b)(1)-(2). Several events trigger this notice requirement,  
16 including when an agency terminates, suspends, or reduces covered benefits or services or  
17 Medicaid eligibility. *See id.* § 431.206(c)(2); *also* 42 C.F.R. § 431.201. Plaintiffs contend  
18 Defendants have deprived them of both notice and the opportunity for a fair hearing. Dkt. #21 at  
19 16-17.  
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21 As an initial matter, the Court agrees with Defendants that the implementing regulations  
22 of Section 1396a(a)(3) do not require them to provide Plaintiffs with notice of their right to a fair  
23 hearing to challenge Defendants' alleged failure to provide community-based habilitative  
24 services with reasonable promptness. *See* Dkt. #35 at 21. While agency termination,  
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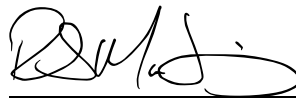
1 suspension, or reduction of covered benefits, covered services, or Medicaid eligibility require an  
2 agency to provide Medicaid applicants with written notice of their right to fair hearing, the  
3 implementing regulations of the Social Security Act do not require the same notice when an  
4 applicant believes his services are not provided in a reasonably prompt manner. *Compare* 42  
5 C.F.R. § 431.206(c), *with* 42 C.F.R. § 431.220(a)(1). Instead, individuals who believe their  
6 claim has not been acted upon with reasonable promptness must first request a hearing; an  
7 individual requests a hearing when they, or their authorized representative, makes “a clear  
8 expression . . . that he wants the opportunity to present his case to a reviewing authority.” 42  
9 C.F.R. § 431.201. Once a hearing is requested, the agency’s notice requirement is triggered. *See*  
10 42 C.F.R. § 431.206(c)(2) (requiring agencies to provide applicants with notice “whenever a  
11 hearing is otherwise required in accordance with § 431.220(a)”). Given these implementing  
12 regulations, along with Plaintiffs’ failure to allege that they have requested a hearing, Plaintiffs  
13 fail to establish they are entitled to summary judgment for Defendants’ alleged failure to provide  
14 them with notice of their right to a fair hearing.  
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17 Additionally, even if Defendants were required to provide Plaintiffs with notice,  
18 Defendants have presented sufficient evidence indicating they provide waiver applicants with  
19 notice of their right to a fair hearing during the waiver application process, and during an  
20 individual’s service plan meetings. *See* Dkts. #35 at 23-24, #46 at Exs. A at 3, B at 8, 15-16, C  
21 at 9, 17-18. Plaintiffs do not dispute that Defendants provide notices with fair hearing  
22 information, but instead contend these notices are not adequate because they do not explain why  
23 provision of community-based habilitative services is delayed. *See* Dkt. #53 at 4.  
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1 DATED this 29<sup>th</sup> day of June, 2017.

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3 RICARDO S. MARTINEZ  
4 CHIEF UNITED STATES DISTRICT JUDGE  
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